

1 Rule 56. Summary judgment.

2 (a) For claimant. A party seeking to recover upon a claim, counterclaim or cross-claim or to
3 obtain a declaratory judgment may, at any time after the expiration of 20 days from the
4 commencement of the action or after service of a motion for summary judgment by the adverse
5 party, move ~~with or without supporting affidavits~~ for a summary judgment ~~in his favor~~ upon all
6 or any part thereof.

7 (b) For defending party. A party against whom a claim, counterclaim, or cross-claim is
8 asserted or a declaratory judgment is sought, may, at any time, move ~~with or without supporting~~
9 ~~affidavits~~ for a summary judgment ~~in his favor~~ as to all or any part thereof.

10 (c) Motion and proceedings thereon. The motion, memoranda and affidavits shall be ~~filed~~
11 ~~and served~~ in accordance with ~~CJA-4-501~~ Rule 7. The judgment sought shall be rendered if the
12 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
13 affidavits, if any, show that there is no genuine issue as to any material fact and that the moving
14 party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in
15 character, may be rendered on the issue of liability alone although there is a genuine issue as to
16 the amount of damages.

17 (d) Case not fully adjudicated on motion. If on motion under this rule judgment is not
18 rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the
19 hearing of the motion, by examining the pleadings and the evidence before it and by
20 interrogating counsel, shall if practicable ascertain what material facts exist without substantial
21 controversy and what material facts are actually and in good faith controverted. It shall
22 thereupon make an order specifying the facts that appear without substantial controversy,
23 including the extent to which the amount of damages or other relief is not in controversy, and
24 directing such further proceedings in the action as are just. Upon the trial of the action the facts
25 so specified shall be deemed established, and the trial shall be conducted accordingly.

26 (e) Form of affidavits; further testimony; defense required. Supporting and opposing
27 affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible
28 in evidence, and shall show affirmatively that the affiant is competent to testify to the matters
29 stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit
30 shall be attached thereto or served therewith. The court may permit affidavits to be supplemented
31 or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for

summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of ~~his-the~~ pleadings, but ~~his-the~~ response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. ~~If he does not so respond, summary~~ Summary judgment, if appropriate, shall be entered against ~~him~~ a party failing to file such a response.

(f) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that ~~he-the party~~ cannot for reasons stated present by affidavit facts essential to justify ~~his-the party's~~ opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith. ~~Should it appear to the satisfaction of the court at any time that~~ If any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party ~~employing~~ presenting them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused ~~him to incur~~, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.